

### **REMARKS**

Claims 1-3, 5, 7-11, and 13-24 are pending in this application, with claims 5 and 15-24 having been withdrawn from consideration. To expedite prosecution of this application, withdrawn claims 5 and 15-24 are now canceled. With entry of these amendments, claims 1-3, 7-11, 13, and 14 will be pending in this application.

### **ELECTION OF SPECIES**

Applicant affirms the election of the species represented by Figure 5, on which pending claims 1-3, 7-11, 13 and 14 are readable.

### **CLAIM OBJECTIONS**

Claim 8 is amended for correction of claim dependency.

### **REJECTIONS UNDER §103**

Claims 1-3, 7-11, 13, and 14 were rejected under §103(a) as being unpatentable over *Walak* (U.S. Patent No. 7,168,605)<sup>1</sup> in view of *Pantorotto et al.* (J. Am. Chem. Soc. (2003), vol. 125, pp. 6160-6164). Applicant respectfully requests reconsideration of this rejection.

The Office Action alleges that *Pantorotto* teaches “[t]hese therapeutics are too large to be contained within a nanotube and are instead partially contained in the nanotube for delivery.” Applicant respectfully disagrees that *Pantarotto* teaches that the therapeutics are partially contained in a nanotube.

*Pantarotto* describes carbon nanotubes functionalized with peptides. Referring to “Scheme 1” on page 6161, nanotube 1 is shown with an amino functional group attached to the outer surface of the nanotube sidewall. *Pantarotto* indicates that these nanotubes were functionalized as previously described in Exhibit Reference #13 cited in the bibliography (see pg. 6161, top of 1st column). Exhibit Reference #13 indicates that the “functionalisation is based

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<sup>1</sup> Applicant notes that if *Walak* is being used as a reference that only qualifies under §102(e), then a §103(a) rejection using *Walak* would not be proper because the application of *Walak* and the instant application are commonly-owned. However, because Applicant believes that the rejection can be overcome on its merits alone, the issue of whether *Walak* qualifies as prior art under § 102(a), or some other provision, is not addressed in this response. As such, Applicant does not concede that *Walak* qualifies as prior art and reserves the right to antedate the *Walak* reference at a later time.

on the 1,3-dipolar cycloaddition reaction to the external surface of the nanotube” (see attached, at pg. 3050, 1st column, middle of 7th paragraph).

Referring back to *Pantarotto*, by chemical reaction, peptides are then coupled to the end terminal of these amino functional groups. In nanotube 3, the peptide Gly-Tyr-Tyr-Gly-Lys is coupled to the end terminal of the amino functional group. In nanotube 6, the peptide Ac-Cys-FMDV is coupled to the end terminal of the amino functional group. Both peptides, along with the amino functional groups to which they are attached, are situated entirely outside of the nanotubes.

For at least these reasons, Applicant respectfully submits that the claims are not rendered obvious by *Walak* in view of *Pantorotto*. Accordingly, favorable reconsideration is respectfully requested.

### **CONCLUSION**

Applicant respectfully submits that the present application is now in condition for allowance. The Examiner is invited to contact Applicant’s representative to discuss any issue that would expedite allowance of this application. The Commissioner is authorized to charge all required fees, fees under § 1.17, or all required extension of time fees, or to credit any overpayment to Deposit Account No. 11-0600 (Kenyon & Kenyon LLP).

Respectfully submitted,

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Date: 15 November 2007

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